

PROVIDENCE DEVELOPMENT GROUP
1400 BATTLEGROUND AVE. # 104
GREENSBORO NC 27408

FORSYTH CO, NC 71 FEE: \$ 40.00
PRESENTED & RECORDED: 10/26/1998 11:32AM
DICKIE C. WOOD REGISTER OF DEEDS BY: WILLIA
BK2031 P2010 - P2026

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE ARBORETUM HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION, made on the date hereinafter set forth by Arboretum Partners, L.L.C., a North Carolina limited liability company (hereinafter referred to as "Declarant"):

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 26.131 acres of real property located in Kernersville Township, Forsyth County, North Carolina, the same being shown as Lot 4 on a map of The Arboretum, recorded in Plat Book 41 at Page 17, in the Forsyth County Registry.

WHEREAS, Declarant desires to create thereon an exclusive residential community of townhouses which shall be known as The Arboretum; and

WHEREAS, Declarant wishes to preserve the attractiveness of the subdivision and to prevent any future impairment thereof, to avoid nuisances, and to maintain the exterior of the townhouse units and the Common Area; and accordingly, Declarant shall subject the real property previously described, together with any additions thereto, to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, for the benefit of the property itself and all future owners thereof;

WHEREAS, Declarant has created an organization which shall oversee the maintenance of the real property, the administration and enforcement of the covenants and restrictions, and the collection and disbursement of the assessments, dues and charges hereinafter mentioned;

WHEREAS, said organization, known as THE ARBORETUM HOMEOWNERS ASSOCIATION, INC., (the "Association") has been formalized under North Carolina law as a non-profit corporation for the purpose of performing the aforementioned functions;

NOW, THEREFORE, Declarant hereby states that all of the properties described above, and any additions thereto, shall be held, sold, occupied and conveyed subject to the following easements, restrictions, covenants, conditions and charges which are for the purpose of protecting the value of the properties. These restrictions, easements, covenants, conditions and charges shall run with the real property and be binding on all parties having any right or title of interest in the described properties or any part thereof in its heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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**ARTICLE I
DEFINITIONS**

Section 1. "Association shall mean and refer to THE ARBORETUM HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association duly elected in accordance with its By-Laws.

Section 3. "Common Area" shall mean all real property owned and maintained by the Association for the common use and enjoyment of the Owners. The Common Area is shown and referred to as "Common Area" on the recorded plat and also includes the area shown and referred to as Permanent Wet Detention Pond (the "Pond"). The numbered lots are not part of the Common Area. The Common Area includes all private drives and utilities located outside of any numbered Lot, public street right-of-way, or City of Kernersville utility easement. The Common Area is expressly not dedicated for use by the general public but is to be conveyed by the Declarant to the Association for the common use and enjoyment of the Owners of lots in The Arboretum, as more fully provided hereinafter in this Declaration. The Association will also maintain, repair and preserve any portion of the entrance statement which may consist of certain roadway and signage lighting, landscaping and signage.

Section 4. "Declarant" shall mean and refer to Arboretum Partners, L.L.C., a North Carolina limited liability company, its successors and assigns, if such successors should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 5. "Lot" shall mean and refer to any numbered lot shown upon the recorded subdivision map of the Properties with the exception of the Common Area and the parking and street areas.

Section 6. "Owner" shall mean and refer to the record Owner (other than Declarant), whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Properties" shall mean and refer to that certain real property hereinabove described.

Section 8. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF THE
THE ARBORETUM HOMEOWNERS ASSOCIATION, INC.

Section 1. Area of Development. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and within the jurisdiction of the Association, is approximately 6.336 acres of land located in Forsyth County, North Carolina, more particularly described as being the property shown as **Section One, Lot 4** on the map of **The Arboretum** recorded in Plat Book 41, Page 17, Forsyth County Registry, and any recombination or resubdivision thereof as are effected by recordation of any subsequent map(s).

Section 2. Annexation. The additional land of approximately 19.795 acres located within the remaining area designated as **Lot 4** for future development in Plat Book 41, Page 17, of the Forsyth County Registry, may be annexed by the Declarant without the consent of members within three (3) years of the recordation date of this instrument, provided that the Town of Kernersville, the Federal Housing Administration, and the Veterans Administration determine that the annexation is in accord with the general plan heretofore approved by them.

ARTICLE III
PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every Owner and the Declarant shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees, subject to the provisions of the Kernersville City Code, for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless a written instrument signed by at least sixty-six and two-thirds percent (66-2/3%) of each class of Members, agreeing to such dedication or transfer, has been recorded and PROVIDED THAT this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewer, utility (including CATV) and drainage facilities upon, over, under and across the Common Area without the assent of the Members when, in the opinion of the Board, such easements are necessary

for the convenient use and enjoyment of the Properties. The Common Area shall be preserved for the perpetual benefit of the Owners or for the public in general and shall not be conveyed except to the City of Kernersville or to another non-profit corporation with similar ideals as those of the Association;

(d) the right of the Association to impose regulations for the use and enjoyment of the Common Area and Lots and improvements thereon, which regulations may further restrict the use of the Common Area and Lots;

(e) the right of the Association, with the written assent of Owners entitled to at least two-thirds (2/3) of the votes appurtenant to the Class A and Class B Lots, to mortgage or pledge any or all of its real or personal property as security for money borrowed or debts incurred, subject to the property rights of the Owners as set forth herein;

No Owner shall have any right to, easement over, or interest in any property owned by Declarant unless such property shall have been specifically made subject to this Declaration by Declarant filing an amendment hereto to include such additional property.

Section 2. Delegation of Use.

(a) **Family.** The right and easement of enjoyment and access granted to every Owner in Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence.

(b) **Tenants or Contract Purchasers.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence or a portion of said residence within the Properties as their principal residence.

(c) **Guests.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated to the guests of the Owner, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors governing said use.

(d) **Appurtenant to Ownership.** The right and easement of enjoyment in and to the Common Area may not be separated from the ownership of any Lot.

Section 3. Parking Rights.

(a) **Parking Spaces.** There will not be specifically designated spaces for the Owners and their guests. The Board of Directors of the Association may modify the parking arrangement from time to time as it may determine is in the best interest of the Owners.

(b) Recreational or Commercial Vehicles. No campers, trucks, vans, or other recreational or commercial vehicles may be parked or kept within the Properties, except at locations specifically designed for such parking by the Board of Directors of the Association. The Board of Directors may make reasonable charges for parking of such vehicles in designated areas and may refuse to allow any such parking within the Properties. No trailers, boats, or tractors may be parked or kept within the Properties, except maintenance equipment owned by the Association.

(c) Parking Rules and Regulations. The Board of Directors may make such reasonable rules and regulations as it may elect with respect to the parking of vehicles aforesaid and may amend and vary the requirements of this Section without the consent of the Owners.

Section 4. Conveyance of Title to the Association. Declarant covenants for itself and its successors and assigns, that it shall convey fee simple title to the Common Area to the Association prior to the conveyance of the first Lot to an Owner. Declarant reserves an easement to, from, over and across the Common Area for the purpose of constructing additional units upon the Lots or for the purpose of constructing any amenities or improvements upon the Common Area. Such conveyance shall be free and clear of all encumbrances and liens, except as to any drainage and utility easements shown on the recorded plat of The Arboretum.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Declarant and every Owner of a Lot which is subject to assessments shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two (2) classes of voting memberships:

(a) Class A. Class A Member(s) shall be (i) the Declarant, its successors or assigns, as to Lots retained by the Declarant upon the termination of Class B membership, and (ii) all Owners other than the Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members. The vote or votes for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast nor shall fractional voting be allowed with respect to any Lot.

(b) Class B. The Class B Member shall be the Declarant as to all Lots owned by the Declarant which have not been converted to Class A Lots as provided in subparagraphs (1)-(3) below. The Declarant shall be entitled to three (3) votes for each Class B Lot. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier.

- (1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (2) upon three (3) years after the date of recordation of the Declaration, or
- (3) upon the resignation of Declarant as a Class B Member.

Section 3. In the event that any Owner of a townhouse ceases to occupy the unit for his or her personal residence, then the votes of Owners of such vacant or rental units, if voted in a block, shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements, replacements and repairs, and (3) all charges or amounts paid by the Association on behalf of an Owner, such assessments and charges to be established and collected as hereinafter provided.

The annual and special assessments as well as amounts paid by the Association on behalf of an Owner, together with interest at the rate of ten percent (10%) per annum, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, or amount paid by the Association on behalf of an Owner, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal liability for delinquent assessments shall not pass to his successor in title unless expressly assumed by them, but any delinquent assessment shall constitute an encumbrance on the property despite passage of title.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the promotion of the recreation, health, safety, and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose; for the exterior maintenance of the townhouse units; for the promotion of the use and enjoyment of the Common Area; for the payment of taxes and special assessments levied against the Common Area; for the procurement and maintenance of insurance in accordance with the By-Laws; for the payment of employment contracts, including those of attorneys to represent the Association when necessary; for the lighting, maintenance and landscaping of the Common Area; for the maintenance of private drives and parking pads located adjacent to each of the Lots within the Properties; for the payment of water and sewage disposal charges attributable to the Common Area; and

for the payment of permanent wet detention pond maintenance, in accordance with the applicable North Carolina General Statutes.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Thousand Dollars (\$1,000.00) per Lot.

- (a) For the first two (2) years following January 1 of the calendar year immediately following the conveyance of the first Lot, the annual assessment shall not be increased except to the extent necessary to cover the increased costs of taxes, insurance and maintenance; and
- (b) Thereafter the maximum annual assessment shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year; and
- (c) The maximum annual assessment may be increased without limit by a vote of sixty-six and two-thirds percent (66-2/3%) of the Class B Members (so long as there is a Class B Member) and by a vote of sixty-six and two-thirds percent (66-2/3%) of the Class A Members who are voting in person or by proxy, at a meeting duly called for this purpose.

At any time, The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area. Every five (5) years the Board of Directors may authorize a special assessment in an amount not to exceed Five Hundred Dollars (\$500.00). To impose an assessment in intervals less than every five (5) years or in an amount greater than Five Hundred Dollars (\$500.00), the Board of Directors must have the assent of sixty-six and two-thirds percent (66-2/3%) of the Class B Members (so long as there is a Class B Member), and the assent of sixty-six and two-thirds percent (66-2/3%) of the votes of the Class A Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Declaration shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Annual Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a quarterly basis. However, each Lot owned by the Declarant shall be assessed for both annual and/or special assessments at twenty-five percent (25%) of the assessment for Lots upon which all improvements have not been completed by Declarant and fifty percent (50%) of the assessments for Lots upon which all improvements have been completed by Declarant. In addition, no assessments shall be due from Declarant until ninety percent (90%) of the Lots in The Arboretum have been conveyed to Owners. Furthermore, the reduced assessment ratio for a particular Lot owned by the Declarant shall terminate immediately upon the transfer of said Lot from the Declarant to a Class A Member; and thereafter, the full one hundred percent (100%) assessment for such Lot shall apply.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall be collected on a monthly basis and shall commence as to each Lot on the first day of the month following the conveyance of that Lot by the Declarant. Upon the initial transfer of a Lot, the original Owner shall contribute one (1) month's dues plus an amount equal to one month's dues to be used by the Association as working capital. This requirement for working capital shall not apply to subsequent transfers of ownership. Assessments on Lots owned by Declarant shall be due and payable as provided in Section 6. The first annual assessment shall not exceed the maximum annual assessment set forth in Section 3 and shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment. Within fifteen (15) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. This certificate shall constitute conclusive evidence of payment of any assessment to any third party, acting in reliance on the statement.

Section 8. Effect of Nonpayment of Assessments: Remedies. Any assessment not paid within ten (10) days after the due date shall incur a late charge of Ten Dollars (\$10.00) and, if not paid within thirty (30) days, shall bear interest from the date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and to enforce the lien against the property. Interest, costs and reasonable attorney's fees shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Effect of Nonpayment of Taxes or Public Capital Improvement Assessments. The Association shall be responsible for the payment of local taxes and payments of assessments for public and private capital improvements made to or for the benefit of the Common Area. Upon default by the Association in the payment to the government authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay the taxing or assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or

assessments due the governmental authority by the total number of residential Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of the notice of the amount due, then such sum shall become a continuing lien on the residential site of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law against the Owner personally obligated to pay the same or may elect to foreclose the lien against the Lot of the Owner.

Section 10. Effect of Conveyance on Lien. Sale or transfer of any Lot shall not affect the assessment lien or liens as provided for in the preceding section. No such sale or transfer shall relieve such Lot from liability for any assessments or from the lien thereof.

Section 11. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens as provided for in the preceding sections. However, the sale or transfer of any Lot which is subject to any first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust.

Section 12. Exempt Property. All property dedicated to, and accepted by public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the state of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI USE RESTRICTIONS

Section 1. Land Use and Building Type. Every Lot shall be used for residential purposes only, and no structures shall be erected or allowed to remain on any Lot except one townhouse not exceeding two stories. Only one family may occupy such Lot as a principal residence at any one time. Declarant may maintain a sales office, model, and construction office in one or more units in accordance with the Kernersville City Code.

Section 2. Prohibition Against Commercial Uses: Nuisances. No Lot shall be used for business, manufacturing or commercial purposes, nor shall any animals or fowls be kept or allowed to remain on any Lot for commercial purposes, and no animals other than household pets shall be kept or allowed to remain on any Lot for any purpose, nor shall any activity be done on any Lot which is a nuisance or any annoyance to the community. No unlicensed motor vehicle, nor any motor vehicle which has been nonoperational for more than one week, shall be allowed to remain in the open on any part of the Properties.

Section 3. Building Lot Area. No Building Lot may be subdivided by sale or otherwise so as to reduce the total area of the Building Lot as will be shown in Lot 4 on the plats of The Arboretum to be recorded in the Forsyth County Registry, except by written consent of the Declarant or the

Association after the termination of the Class B membership. Said consent may be withheld in the discretion of the Declarant or the Association. Said division shall be in accordance with the Town of Kernersville ordinances and shall require a recombination deed of the parcel.

Section 4. Dwelling Size. No townhouse shall be erected or allowed to remain on any Lot unless such dwelling shall contain at least 1,100 square feet of heated, finished living area. All computations of square footage as above required shall exclude basements and open porches. No floor or level of any residence, which floor or level is wholly or partially below the natural grade of the front elevation of the townhouse constructed on the lot, shall be included in the computation of the above-required square footage.

Section 5. Approval of Residence Design and Site Plan.

(a) No site preparation or initial construction, erection or installation of any improvements, including, but not limited to, outbuildings, fences, walls, signs, mailboxes, flags, lampposts and other structures, or excavation, or changes in grades, or landscaping shall be undertaken upon any Lot unless the complete plans and specifications, showing the nature, kind, shape, height, type of materials and location of the proposed improvements on the Lot, shall have been submitted to the Declarant and expressly approved in writing. No subsequent alteration or modification of any existing improvements or construction, erection or installation of additional improvements including any athletic or playground equipment (including but not limited to basketballs goals), may be undertaken or allowed to remain without the review and express written approval of the Declarant.

(b) In the event that the Declarant fails to approve or disapprove any improvement designated in subparagraph (a) within thirty (30) days after plans and specifications have been submitted and received, approval will not be required, and the requirements of this Section 5 will be deemed to have been fully satisfied; provided that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant, or if they contain erroneous data or fail to present full and adequate information upon which the Declarant can arrive at a decision.

(c) The Declarant shall have the right, at its election, to enter upon any of the Lots during preparation, erection or installation of any improvements to determine that such work is being performed in conformity with the approved plans and specifications.

(d) No approval of plans, location or specifications shall be construed as representing, warranting or guaranteeing that any improvement thereto will be built in a good workmanlike manner or that the plans and specifications with respect thereto shall result in an improvement of any particular quality. The Declarant shall not be responsible or liable for any defects in any plans and specifications submitted, revised or approved under the restrictive covenants, nor shall Declarant have any responsibility for defects in construction pursuant to any such plans and specifications. Each Owner shall have sole responsibility for compliance with the plans and specifications as approved by the Declarant.

(e) Upon the termination of the Class B membership, all powers of the Declarant outlined in this section shall transfer to the Association.

Section 6. Use of Common Area. The Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Declarant or by the Association following the termination of the Class B membership.

Section 7. Temporary Structures. No structure of a temporary character shall be erected or allowed to remain on any Lot and no outbuilding erected on any Lot shall be used as a residence either permanently or temporarily.

Section 8. Streets, Fences, Walls and Signs. No street shall be laid out or opened across or through any Lot, nor shall any fence or wall be created or allowed to remain on said property, except with the written consent of the Declarant. No banners or signs shall be erected or allowed to remain on said property. A "For Sale" sign or "For Rent" sign not exceeding three feet in width and two feet in height shall be allowed to be posted in a window of the townhouse but not on the Lot itself. Notwithstanding the foregoing, walls, fences, signage, and landscaping may be erected, placed and may remain as part of the Common Area with the written consent of the Declarant, except that chain link fences are prohibited on any Lot, but may be placed around the retention pond as part of the common area.

Section 9. Sanitary Sewer. No townhouse shall be erected or allowed to remain on any Lot that is not connected with the sanitary sewer system serving The Arboretum.

Section 10. Waiver of and Consent to Violations. The Declarant may waive any violation of this Article of the restrictive covenants by appropriate instrument in writing, provided that if the violation occurs on any Lot or Lots which abuts a Lot or Lots which have been conveyed to an Owner or Owners, the written waiver of such violation by such Owner or Owners shall also be obtained, except as to violations for which only the written consent of the Declarant shall be required for waivers.

Section 11. Utility Lines, Satellite Dish, Radio and Antennas. Electrical service, telephone, cable television, and other such utility lines shall be placed underground and no outside electrical lines shall be placed overhead. This section also applies to satellite antennas less than one meter in diameter, off-the-air television antennas and multipoint distribution services (MDS) antennas less than one meter in diameter (hereinafter collectively referred to as "Antenna"). If reception will not be impaired, the Antenna shall be located inside the unit. A Homeowner will not be permitted to install an Antenna as hereinabove defined in any area which will be visible to the residents or their guests and invitees. Furthermore, an Antenna shall not be installed in any of the "Common Areas". If a Homeowner selects a dish and it cannot be located inside the unit, the Homeowner shall be required to paint or screen the Antenna thereby providing as minimal visual intrusion as possible. MDS Antennas in excess of 12 feet above the roof line of any unit are prohibited. For the safety and well-being of the residents, the Antenna shall not be affixed to the roofs of the units. The primary purpose for the aforementioned restrictions is to maintain the integrity of the values of the units so that all of the unit owners will benefit from a uniform increase in value.

Section 12. Garbage Disposal. All garbage shall be stored within the residence of each Owner or in the storage facilities, if any, provided for said residence at the time same is constructed. No

Owner may change or supplement the garbage disposal facilities provided for said residence at the time same is constructed. Nothing contained herein shall prevent an Owner from complying with the specific requirements of public health authorities or other public agencies regarding garbage disposal.

Section 13. Clothes Drying. No drying or airing of any clothing or linens shall be permitted outdoors on any Lot or in any other unenclosed area within the Properties.

Section 14. Application of Restrictions. The foregoing covenants and restrictions shall apply only to the Properties and nothing contained herein shall preclude Declarant from altering the location of any private drives other than such portions of such private drives as abut said property.

Section 15. Regulations. Reasonable regulations governing the use of the Common Area and external appearance of the townhouse units may be made and amended from time to time by the Board of Directors of the Association. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request.

ARTICLE VII EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, gas line, telephone, cable television, electric power line, sanitary sewer and storm drainage facilities and for other public utility installation are reserved as shown on the recorded plat.

(a) Declarant reserves an easement for and the right at any time in the future to grant rights of way for the installation and maintenance of public utilities across, on, or under any Lot at a distance of not more than ten feet from the rear and side lines of any Lot, but such rights of way must be used so as to interfere as little as possible with the use of said property by its Owners.

(b) Within any easement, no structure, planting or other material shall be placed which may interfere with the installation of any utility, or which may change the direction of flow or drainage of water.

(c) The Association shall also have the right to maintain all sewer and water lines located on the Lots and/or located within or under the units.

(d) Declarant reserves an easement on, over and under the Properties to maintain and to correct the drainage or surface water runoff. Such right expressly includes the right to cut or remove any trees, shrubs, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, Declarant shall restore the affected property to its original condition to the extent practicable.

Section 2. Easement of Support. Every Lot shall be burdened with the easement or lateral support in all party walls for the benefit of the abutting townhouse. A party wall is a wall that is placed on a common boundary line between Lots. The general rules of law regarding party walls, lateral

~~support and below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.~~

(a) The cost of reasonable repair and maintenance of a party wall shall be shared by the joint Owners who make use of the wall. The Owner who bears the cost of repair shall be entitled to the right of contribution from the adjoining Owner. This right shall be appurtenant to the land and shall pass to the Owner's successors in title.

(b) If a party wall is destroyed by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportionate amounts.

(c) Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance or reconstruction of a party wall. The Owner shall restore the adjoining Lot or Lots to the same or similar condition as that which prevailed to commencement of the work as is reasonably practicable.

(d) If any Owner desires to sell his or her property, he or she may, in order to assure a prospective purchaser that no adjoining property Owner has a right of contribution, request a certification from the adjoining Owners that no right of contribution exists. All Owners must make such certification immediately upon request and without charge. If an Owner claims a right to contribution, the certification shall contain a recital of the amount claimed.

(e) In the event of any dispute arising concerning a party wall, such dispute shall be settled by arbitration as provided by the laws of North Carolina.

Section 3. Easement for Governmental Access. An easement is hereby established over and across the Common Area for the benefit of any agencies performing governmental duties such as garbage collection, mail delivery, police and fire protection, and the reading of utility meters.

ARTICLE VIII INSURANCE

Section 1. Association's Responsibilities. The Association shall maintain adequate liability insurance, in an amount not less than \$1,000,000.00, insuring the Association and its Members against any injuries occurring upon the Common Area. The Association shall also maintain hazard insurance covering all property owned by the Association.

Section 2. Owners' Responsibilities. All Owners shall be responsible for maintaining insurance coverage on their own Lot and improvements thereon, if desired, to protect against loss or damage from all hazards. In addition, all Owners shall be responsible for maintaining personal liability insurance for injury to person or property occurring on his or her Lot, if so desired.

**ARTICLE IX
MAINTENANCE**

Section 1. Association's Responsibilities. The Association shall provide exterior maintenance on each Lot subject to assessments as outlined herein. Such exterior maintenance includes, but is not limited to: painting, repair, replacement and care of exterior building surfaces, roofs, gutters and downspouts, walkways. In addition, the Association shall provide lawn care for each Lot including the maintenance of any landscaping planted by the Declarant and regular cutting of the grass. Once a unit has been taken over or sold, watering shall no longer be provided by Declarant. The exterior maintenance responsibilities of the Association shall not include glass surfaces or any patio, deck or fence located on any Lot. In addition, the Association shall provide maintenance for the completed permanent wet detention pond as directed by the governmental office having jurisdiction for watershed protection. If the Association should be dissolved or cease to exist, then in that event, all the owners of record at the time of required maintenance shall be jointly and severally liable for any and all costs attendant thereto.

(a) The Association and its agents or employees shall have access to any Lot from time to time during reasonable working hours for the maintenance of the Common Area, driveways and parking lots, and for exterior townhouse, party wall and yard maintenance on all Lots. The Association and its agents shall also have access to any Lot at any time without notice as may be necessary to make emergency repairs to prevent damage to the Common Area or any Lot. If an Owner installs a fence or otherwise prevents access for maintenance, the Association shall have no obligation to maintain such Lot, including the provision of lawn care. However, if an Owner installs a fence and fails to maintain the Lot, the Association has the right to enter the Lot and assess additional dues to the Owner for maintenance purposes.

(b) In the event that the need for maintenance, repair or replacement results from the willful or negligent act of the Owner, his family, guests, tenants, invitees, independent contractors, or contract purchasers, the cost of such maintenance, replacement or repair shall be added to the assessment for that Lot.

Section 2. Owner's Responsibilities. Each Owner shall maintain, repair or replace at his or her expense all improvements on his or her lot which so require; including patios, fences, decks or electrical and plumbing equipment contained in a party wall. Each Owner shall also maintain, repair or replace at his or her own expense, the heating and cooling units servicing his or her dwelling, whether located on his or her Lot or in the Common Area. Each Owner shall be responsible for the repair or replacement of his or her townhouse or Lot damaged by casualty.

**ARTICLE X
FINANCING PROVISIONS**

Section 1. Approval of Owners and Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the Owners and holders of first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause. The real property owned by the Association shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Kernersville or to another non-profit corporation for the purposes set forth herein. Any sales or transfers of real property located within the Common Area shall be done in accordance with the Kernersville City Code.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot.

(c) By act or omission change, waive, or abandon any plan of regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of residences located on Lots, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and landscaping in the subdivision.

(d) Fail to maintain fire and extended coverage insurance on insurable improvements in the Common Area on current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value.

(e) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged improvements.

Section 2. Books and Records. Any Owner or holder of a first deed of trust on any Lot, or the agent or agents of either, shall have the right to examine the books and records of the Association during any reasonable business hours.

Section 3. Payment of Taxes and Insurance Premiums. The Owners or holders of first deeds of trust on Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms, or corporations making such payments shall be owed immediate reimbursement from the Association.

ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Terms and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years unless a majority of the Owners consent in writing to their termination. In addition, prior to the sale of any Lot by the Declarant, this Declaration may be amended or revoked by Declarant in its sole discretion, except, however, relating to the maintenance and ownership of the permanent wet detention pond, which amendments or revocations must be first reviewed and approved by the governmental office having jurisdiction for watershed protection. After the sale of Lots commences, this Declaration may be amended by an instrument signed by the Declarant and not less than seventy-five percent (75%) of the Lot Owners, provided that such amendment shall not alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment to the Declaration must be approved by the Kernersville City Attorney or his deputy and must be properly recorded.

Section 4. Federal Home Administration/Veterans Administration Approval. In the event that any agency of the federal or state government or any federal corporation fails to issue mortgage insurance, extend or guarantee credit, refuse to acquire obligations secured by first deeds of trust on Lots subdivided in The Arboretum, or provide any other service relating to housing finance because of any provision of this Declaration, Declarant reserves the right to modify this Declaration to the extent necessary to make it acceptable to such agency or corporation. Any modification or amendment must be properly recorded in the Forsyth County Registry.

Section 5. Private Drive Maintenance and Emergency Access. Neither the City of Kernersville nor the state of North Carolina shall be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot or any Owner, occupant or guest thereof, when such failure is due to lack of access to the Properties or any Lot thereof due to inadequate design, construction, or maintenance of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner or occupant of any Lot. Neither the City of Kernersville nor the state of North Carolina shall be responsible for maintaining any private drive, in that the drives will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance. Such responsibility shall rest with the Association and the Owners and occupants of the Properties.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on this the 20 day of October, 1998.

ARBORETUM PARTNERS, L.P.C.

By:  (SEAL)
Manager

NORTH CAROLINA

Guilford COUNTY

I, Wendy Allison, a Notary Public for said County and State, do hereby certify that Keith P. Phillips, Manager of ARBORETUM PARTNERS, L.L.C., a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this 20 day of October, 1998.



Wendy Allison
Notary Public

My Commission Expires MAY 12 2003

Commission/Expiration: _____

STATE OF NC - FORSYTH CO

The foregoing certificate(s) of:

Wendy Allison

NP(s) is/are certified to be correct this the 20 day of Oct, 1998

Dickie C. Wood, Register of Deeds by: [Signature] Deputy/Asst

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